

Decision 10-03-007 March 11, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
(U 39-E) for Approval of Demand Response
Agreements.

Application 07-02-032
(Filed February 28, 2007)

Southern California Edison Company's (U 338-E)
Application for Approval of a Demand Response
Resource Purchase Agreement for 2007 and 2008.

Application 07-02-033
(Filed February 28, 2007)

**DECISION DENYING PETITION FOR MODIFICATION OF
DECISION 07-05-029 AND REJECTING EXPANSION
OF AN EXISTING DEMAND RESPONSE CONTRACT**

This decision denies Pacific Gas and Electric Company's (PG&E) Petition for Modification of Decision (D.) 07-05-029 (PfM or Petition), which seeks to increase the amount of demand response available under an existing demand response contract between PG&E and Energy Curtailment Specialists, Inc. (ECS). The Petition requests an expansion of the amount of load reduction available in the ECS contract without changes to other contract terms, and asserts that because the original contract was found cost effective, the expanded contract will remain cost effective. We deny this Petition and reject the contract expansion both because the cost effectiveness of the request is not clear, and because certain provisions of the existing contract, which would be retained in the proposed contract expansion, conflict with current demand response policies adopted in D.09-08-027. That decision adopted budgets, activities, and policies for utility demand response for 2009-2011, and updated Commission policies on

appropriate settlement baselines, dual participation rules, and other characteristics for demand response activities. We encourage PG&E to include contract terms that conform with policies adopted in D.09-08-027 in future requests to modify existing contracts.

1. Procedural Background

The Commission encourages California's electric utilities to decrease electricity usage at times of peak system demand through the development of new demand response programs. Customers enrolled in demand response programs receive incentives such as payments or lower electric rates in return for committing to reduce their electricity usage under certain specified circumstances. In Decision (D.) 06-11-049, the Commission directed Southern California Edison Company (SCE) and Pacific Gas and Electric Company (PG&E) to issue Requests for Proposals (RFPs) from third parties that could administer demand response programs and provide megawatts beyond those available from the electric utilities' own programs. PG&E's RFP resulted in five contracts with third parties that agreed to provide demand response megawatts to the utility by working with customers to enable them to shed load when necessary, aggregating the resulting demand response potential and delivering it according to contract provisions. As a result of the RFP process, PG&E filed Application (A.) 07-02-032, requesting Commission approval of five agreements with demand response aggregators. The Commission approved these contracts, and a similar application for additional contracts filed by SCE, in D.07-05-029, on May 3, 2007. The five agreements between PG&E and third-party aggregators approved in D.07-05-029 were with AER, Ancillary Services Coalition, EnergyConnect, Energy Curtailment Specialists (ECS), and EnerNOC, Inc. These agreements provide PG&E with 35 – 46 megawatts (MW) of demand response by

August 2007, between 107 and 129 MW by August 2008 and between 132 and 149 MW during May through October of 2009 through 2011. Each agreement specifies a megawatt commitment level, and each demand response aggregator receives a capacity payment whether or not the program is called. When the program is called, each aggregator receives an energy payment for demand reductions up to its commitment level. These contracts have been in place since the 2007 summer season, with modifications to some contracts approved by the Commission in 2007 and 2008.

On February 13, 2009, PG&E filed this Petition for Modification (PfM or Petition) to increase the load reduction available under the ECS demand response contract approved in D.07-05-029. On March 13, 2009, ECS filed a response in support of the PG&E Petition, and on March 16, 2009, the Division of Ratepayer Advocates (DRA) filed a protest urging the Commission to reject the Petition. With permission from the Administrative Law Judge (ALJ) assigned to this proceeding, PG&E filed a reply to the DRA protest on March 26, 2009. PG&E bears the burden of proof that its Petition is reasonable, cost effective, and in the public interest.

2. Description of Proposed Contract Modification

In this Petition, PG&E requests approval to expand an existing bilateral contract to allow ECS to provide more demand response than originally allowed under that contract. PG&E asserts that the contract in its current form is cost effective, and that ECS's performance under the contract showed improvement in 2008 over 2007, with one test event in 2008 achieving a demand response load reduction of 99 percent of its commitment level for that year. Based on the fact that ECS is meeting its commitments, PG&E believes that an increase in the commitment level of the contract would provide actual increases in the amount

of demand response over the terms of the contract, while remaining cost effective.¹ Under the proposed modification to the contract, ECS would increase the load it commits to provide during called events in 2009 by 37.5%, in 2010 by 35%, and in 2011 (the final year of the contract) by 50%. The new commitment levels under the modified contract would be as follows:²

Month	Proposed Increase	Commitment Level (in Megawatts)	
		Contract	Proposed
May 2009	37.5%	30.0	41.3
June 2009	37.5%	30.0	41.3
July 2009	37.5%	32.0	44.0
August 2009	37.5%	32.0	44.0
September 2009	37.5%	34.0	46.8
October 2009	37.5%	35.0	48.1
May 2010	35%	40.0	54.0
June 2010	35%	40.0	54.0
July 2010	35%	40.0	54.0
August 2010	35%	40.0	54.0
September 2010	35%	40.0	54.0
October 2010	35%	40.0	54.0
May 2011	50%	40.0	60.0
June 2011	50%	40.0	60.0
July 2011	50%	40.0	60.0
August 2011	50%	40.0	60.0
September 2011	50%	40.0	60.0
October 2011	50%	40.0	60.0

¹ PG&E Petition for Modification of Decision 07-05-029, at 3.

² PfM at 4.

Both PG&E and ECS argue that the modifications to the contract are in the public interest because they would increase the amount of cost effective demand response available to PG&E, consistent with Commission policies such as the loading order, which give priority to energy efficiency, demand response, and other demand side management options over increased generation. PG&E further notes that D.07-05-029 found the ECS contract to be cost effective, and argues that this expansion, which would increase benefits and incentive costs but not administrative costs, should improve the overall cost effectiveness of the contract.³ ECS supports the contract amendment, noting that ECS has actually delivered a large portion of the load reduction that it committed to provide, and assuring us that it can be counted on to provide reliable load reductions in the future.⁴

3. DRA Opposition to the Petition

DRA opposes the PG&E Petition on several grounds, both procedural and substantive, and urges the Commission to deny the Petition and contract expansion. DRA first asserts that the Petition is procedurally deficient because it does not comply with Commission Rule 16.4,⁵ which requires an applicant to file a Petition for Modification within one year of the effective date of the original decision, or to explain why the petition could not have been presented within that time. DRA contends that PG&E did not justify why this Petition was filed more than a year after the original decision, and notes that Petitions that do not

³ PfM at 5.

⁴ ECS response to PfM, 3/13/2009, at 4-5.

meet this requirement are subject to summary denial. DRA also suggests that PG&E should have included this request to expand its existing contract within its Application (A.) 08-06-003⁶ for approval of 2009-2011 demand response budgets and activities, rather than asking for “piecemeal evaluations” of the demand response portfolio.

In addition to these procedural concerns, DRA objects to several substantive aspects of the proposed contract modifications. Specifically, DRA claims that PG&E has not demonstrated the cost effectiveness and total cost of its requested modification to the ECS contract. DRA notes that the cost effectiveness of programs and aggregator contracts reviewed recently in proceeding A.08-06-001 et al., was assessed using a Consensus Framework methodology proposed in Rulemaking (R.) 07-01-041. DRA asserts that it would be inconsistent to use a different cost effectiveness approach for this contract expansion. DRA also notes that the PG&E claim of cost effectiveness depends on the fact that the modification does not raise administrative costs of the aggregator contract, and PG&E’s assertion that the contract was cost effective before the proposed change. DRA contends that PG&E does not provide documentation of these claims. DRA asserts that PG&E should provide documentation that shows the assumptions used in its cost effectiveness analysis of this contract, and redo its analysis using the same framework used in

⁵ Unless otherwise noted, all references to rules are to the Commission’s Rules of Practice and Procedure.

http://docs.cpuc.ca.gov/published/RULES_PRAC_PROC/105138.htm.

⁶ PG&E’s A.08-06-003 was consolidated with A.08-06-001 filed by SCE and A.08-06-002 filed by SDG&E.

A.08-06-001 et al.⁷ DRA also notes that the total cost of the expanded contract is not specified in the Petition, making it difficult to review the incremental costs of the proposed contract modification.

In addition to concerns about the cost and cost effectiveness of the modified contract, DRA asserts that the ECS contract “acts mainly as an emergency resource,” despite being classified as price responsive and using, in part, non-emergency triggers.⁸ DRA notes that in 2007 and 2008, this contract was only dispatched a total of three times, and that at least one of these dispatches was for a test event. Other price responsive programs, such as PG&E’s SmartRate and Critical Peak Pricing, were called much more frequently. DRA asserts that the small number of events called under this contract, which was approved in part due to its “flexible trigger mechanisms,” implies that the contract acts more as an emergency program than as one that is truly price responsive.⁹

4. Procedural Concerns Raised by DRA

As discussed above, DRA expresses concerns over two potential procedural defects with the PG&E Petition. First, DRA notes that the petition for modification was not filed within one year of the effective date of D.07-05-029, which adopted this contract, and asserts that the delay is not sufficiently justified in the Petition. Second, DRA also suggests that the appropriate venue for PG&E to request a modification to this contract was in its demand response application filed in 2008. In response to the first issue, PG&E observes that D.08-06-015

⁷ DRA Protest to PfM, 3/16/2009, at 4.

⁸ DRA protest, at 4-5.

⁹ DRA Protest, at 5.

modifying D.07-05-029 specifically directs PG&E to submit further requests (if any) to modify its demand response contracts using a Petition for Modification. PG&E further argues that the Petition does explain why the petition could not have been filed within one year of the original decision, since the contract modification was not reached until February 2009. Similarly, PG&E states that the program modification was not included in its 2008 demand response application because the contract amendment was not agreed upon until after that application was filed.¹⁰

The procedural objections raised by DRA are not persuasive, and we decline to summarily dismiss this Petition without analyzing its substance. Not only does D.08-06-015 encourage PG&E to file future amendments to its aggregator contracts adopted in D.07-05-029 as Petitions for Modification of that decision, but D.09-08-027 issued in the utilities' demand response applications supports this policy, allowing the utilities to request amendments to the aggregator contracts approved in that decision through either petitions for modification of that decision or through new applications. PG&E's explanation that the agreement to expand this contract was not completed until February 2009 adequately explains why the PG&E request was not filed by May 2008 or included in A.08-06-003. We will consider the PG&E Petition based on its substance.

¹⁰ PG&E Reply to DRA Protest 3/26/2009 (Reply), at 9-10.

5. Discussion

5.1 Conflicts with Commission Policy Set in D.09-08-027

As discussed above, this Petition was filed after the 2009-2011 utility demand response applications were filed, but before the final decision, D.09-08-027, was reached in that proceeding. That decision not only adopts activities and budgets for demand response in 2009-2011, but also sets rules and policies for demand response during this time period. Expanding the ECS contract would amount to the approval of additional demand response beyond that analyzed in A.08-06-001 et al. and authorized in D.09-08-027.

Two aspects of the ECS contract are not in conformance with rules adopted in D.09-08-027. First, the ECS contract uses a baseline that is not consistent with the new baseline adopted in D.09-08-027, and second, the contract does not conform to the new multiple program participation requirements adopted in that decision. In addition to conflicting with current Commission policy on demand response activities, as described below, these inconsistencies may affect the cost effectiveness of the contract amendment, discussed in Section 5.2, below.

5.1.1. Inconsistency with Settlement Baselines Adopted in D.09-08-027

As in most of the existing utility-administered demand response programs approved prior to D.09-08-027, the ECS contract estimates demand response for settlement payment purposes utilizing a “3-in-10 day aggregated baseline.” The baseline provides an estimate of what usage would have been in the absence of the curtailment called under the contracts. The “3-in-10” baseline methodology estimates the baseline using the three highest usage days of the past 10 days similar to the event day. The difference between the baseline usage

calculated using this methodology and the actual usage during a curtailment event is the approximate number of kilowatts curtailed, and is used to calculate settlement payments (one type of incentive) under the contract.

D.09-08-027 considered the 3-in-10 baseline and other possible baseline options. That decision determined that:

It is reasonable for customers to have their baselines calculated in the same way, whether they enroll in a program through an aggregator or through a utility. Similarly, it is reasonable for customers of SCE, SDG&E, and PG&E to be subject to the same baseline. This will make the baseline methodology more consistent and transparent to customers.¹¹

That decision cites at least two recent studies that recommended a “10-in-10” baseline that calculates a baseline by averaging use from all of the 10 most recent non-event and non-holiday days. That decision also notes that “[t]he studies uniformly suggest that there are better baselines than the current three-day unadjusted baseline” used in most demand response programs at the time, including the ECS contract. D.09-08-027 adopted a 10-in-10 baseline for the utilities’ demand response activities during 2009-2011, in order to “provide customers with a relatively simple and understandable baseline that minimizes bias and the possibility of gaming by participants.”¹²

D.09-08-027 did not require that demand response contracts use a 10-in-10 baseline, and footnote 188 on page 141 of that decision indicated that the specified baseline requirement does not apply to demand response contracts between a utility and an aggregator approved by this Commission. Accordingly,

¹¹ D.09-08-027, at 141.

¹² D.09-08-027, at 141.

we have not required that PG&E's existing contract with ECS, with its existing megawatt commitment levels, be amended to use the newly adopted baseline. However, PG&E has not established that it is reasonable to expand the use of the 3-in-10 baseline in light of our conclusion that a 10-in-10 baseline provides a more accurate estimate of baseline energy usage.

In addition, the reasoning used in D.09-08-027 in adopting a uniform settlement baseline for most utility demand response activities, to increase consistency among utilities and transparency to customers, supports the use of the new 10-in-10 baseline in future contracts or contract expansions during the 2009-2011 period, unless a specific reason is provided to justify a departure from the 10-in-10 baseline. PG&E provided no such justification for expanding the use of the 3-in-10 baseline to demand response beyond that allowed under the previously approved contract.

In its comments on the proposed decision, PG&E argues that it is unreasonable to expect the PG&E Petition to conform with rules adopted after the Petition was filed, or to justify its departure from such rules. PG&E's characterization that applying the rules adopted in D.09-08-027 to this petition, "would establish an impossible burden of proof for a petition for modification – that a petitioner must not only explain compliance with existing, but also with future Commission policies," is incorrect. We do not expect petitions for modification or other applications and requests to predict and comply with future Commission policies or rules. We may, however, reasonably apply established Commission policies in subsequent decisions, in order to ensure consistency with those policies and with Commission objectives.

In comments on the proposed decision, PG&E also argues that in declining to approve this petition on the grounds that the expansion is not

consistent with new rules, this decision rejects the finding in D.09-08-027 that the settlement baseline (and other terms) in existing aggregator contracts need not be modified to comply with the new rules. This claim by PG&E is also incorrect. Like D.09-08-027, this decision does not require any changes to the baseline or other terms of the contract as previously approved and modified by the Commission. This decision simply declines to expand the use of these outdated terms to new demand response megawatts, consistent with direction provided in D.09-08-027.

5.1.2. Inconsistency with Dual Program Participation Rules Adopted in D.09-08-027

D.09-08-027 adopted specific rules governing the extent to which a customer may enroll concurrently in more than one demand response activity. That decision requires utilities to:

allow customers to participate concurrently in up to two demand response activities, if one provides energy payments and the other provides capacity payments. These rules shall prohibit concurrent participation in programs with the same trigger (day-ahead or day-of); however, a participant may participate in one day-ahead and one day-of program.¹³

As in the case of the settlement baseline determination, above, D.09-08-027 provided that the dual program participation rules:

will be applied statewide in order ensure that customers throughout the state are treated similarly and fairly. These rules will also apply regardless of whether the customer is enrolled in a

¹³ D.09-08-027, Ordering Paragraph 30.

utility-administered program or one administered by a third-party aggregator.¹⁴

However, the ECS contract prohibits dual program participation except in very limited cases specified in the contract, inconsistent with the rules adopted in D.09-08-027.

Specifically, the contract provides that “Customers that are participating in other PG&E tariff or non-tariff DR programs (except for E-OBMC and E-POBMC)” are ineligible to participate.

Based on the rules adopted in D.09-08-027, we consider the ECS contract to be a capacity payment program, with a day-ahead trigger. Under the dual participation rules adopted in D.09-08-027, customers could participate concurrently in this ECS program and in activities that have a day-ahead trigger and provide energy payments. In its comments on the proposed decision, PG&E asserts that only its Optional Binding Mandatory Curtailment (OBMC) program is its only program with a day-of trigger that provides energy payments. On this basis, PG&E asserts that this contract is consistent with the new rules. This argument is not persuasive for two main reasons. First, PG&E’s PeakChoice program allows customers to design demand response activities that meet their needs by selecting characteristics from among various program options, and it appears that customers may choose a day-of/energy payment only option through this program. In addition, clause 2.1.2.4. of PG&E’s contract with ECS makes a special, limited exception for OBMC from its explicit ban on dual participation; this wording would prohibit participation in any compatible demand response activities that may be developed in the future.

¹⁴ D.09-08-027, at 156.

D.09-08-027 recognized “that some contracts that have already been approved by this Commission, or are being approved in this decision, have concurrent program participation requirements that are not consistent with the rules adopted here.”¹⁵ That decision did not require the modification of existing contracts to make them consistent with the newly adopted rules. However, it did “encourage utilities and aggregators to consider these rules when negotiating new contracts or modifying contracts that have been previously approved.”¹⁶

As in the case of settlement baseline rules, PG&E has not established that it is reasonable to expand the use of incompatible dual program participation requirements given that different standard rules are now in place for 2009-2011. It is reasonable to deny the Petition based on the fact that the proposed expansion of this contract uses outdated dual program participation rules, and PG&E provided no such justification for expanding the use of the dual participation requirements to demand response beyond that allowed under the previously approved contract.

5.2. Cost Effectiveness Analysis

DRA notes that PG&E did not provide documentation in its Petition of either the total cost or the cost effectiveness of this contract expansion. In response, PG&E asserts that such documentation was included in and provided to DRA as part of the analysis supporting the utility’s 2009-2011 Demand Response Program and budget application, A.08-06-003. PG&E also notes that DRA did not request cost effectiveness analysis in this proceeding, and that the Commission has not required a new cost effectiveness analysis to support

¹⁵ D.09-08-027, at 157.

¹⁶ D.09-08-027, at 157.

previous requests to adjust the commitment levels of contracts within its aggregator-managed portfolio.¹⁷

Though PG&E states correctly that the Commission has not asked for a new cost effectiveness analysis for previous contract expansions, those contract amendments were approved before a new cost effectiveness methodology was used to assess demand response program cost effectiveness in D.09-08-027.¹⁸ It is reasonable to evaluate the cost effectiveness of modifications to existing programs using the most recent methodology and assumptions, which, in this case, are those used in D.09-08-027.

The only full cost effectiveness analysis on the record in this proceeding was conducted in 2007, and it is not clear whether that analysis utilized the same methodology or assumptions as the cost effectiveness analysis in A.08-06-001 et al. Because the updated benefit-to-cost ratios provided by PG&E in its response to DRA comments on the Petition are not accompanied by any details or analysis, it is not clear whether they utilize a methodology and assumptions consistent with those used in D.09-08-027.

In addition, the fact that the contract utilizes an outdated settlement baseline that the Commission has found to be relatively inaccurate calls into question the prior cost effectiveness calculations using that settlement baseline to determine incentive payments under the contract. To the extent that load impacts and associated incentive costs used in previous analyses of the cost

¹⁷ Reply at 5.

¹⁸ Section 7.1 of D.09-08-027 finds the Consensus Framework methodology used in A.08-06-001 et al. adequate for the review of the cost effectiveness of demand response activities in that proceeding.

effectiveness of the contract are estimated using an outdated baseline and dual participation requirements, we cannot rely on those calculations to accurately represent the cost effectiveness of the contract

5.3. Price Responsive Triggers

DRA's other substantive concern is that, though PG&E's aggregator contracts are considered to be price responsive due to their flexible triggers that allow them to be called outside of emergency situations, this contract has been called less frequently than many other price responsive programs. PG&E responds that it may call events under this (and other) demand response contracts at its sole discretion, and "absent a system or local emergency, PG&E dispatches the ... contracts when the energy strike price is economic."¹⁹ PG&E argues further that if the program were dispatched more frequently, "PG&E's ratepayers would pay more for the energy under the AMP contracts than they would pay for other resources, increasing the ratepayers' costs."²⁰ PG&E also notes that in 2007 and 2008, it dispatched this ECS contract twice for actual events that were not during emergencies called by the California Independent System Operator (CAISO).

Based on its terms, the contract is, as PG&E claims, price responsive in that it is not limited to being dispatched only during emergency situations. The fact that this contract has been called less frequently than most other PG&E price responsive demand response activities causes us to question whether the contract has been used to its fullest potential, and whether the contract cannot be

¹⁹ Reply, at 6.

²⁰ Reply at 7.

fully integrated with the CAISO's new markets. However, it is not necessary to make those determinations at this time.

5.4. Summary

The contract modification proposed by PG&E in this Petition is not consistent with current Commission policy in several respects, and should be rejected. The proposed contract expansion retains provisions that are not consistent with settlement baseline and dual participation rules adopted in D.09-08-027 for demand response activities, and PG&E does not provide a justification for why the expanded contract cannot or should not incorporate these rules. In addition, PG&E fails to provide documentation in support of its cost effectiveness analysis or even the total cost of the modified contract, making it difficult to determine whether the contract as modified would be cost effective. Based on the inconsistencies with recently adopted Commission rules and the uncertainty in the cost effectiveness analysis of the contract expansion, we find that it is not reasonable to adopt the contract modification proposed by PG&E. Accordingly, the PG&E Petition to modify D.07-05-029 is hereby denied.

6. Categorization and Assignment of Proceeding

This proceeding is categorized as ratesetting. The assigned Commissioner is Dian Grueneich and the assigned ALJ is Jessica T. Hecht.

7. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on February 24, 2010 by ECS, PG&E, and DRA, and PG&E and DRA filed reply comments on March 1, 2010. The comments filed by DRA were generally supportive of the proposed decision; both ECS and PG&E filed

comments supporting the contract modification as originally requested. These parties argue that the proposed modification is cost effective, and that it is not reasonable to expect a contract modification to comply with rules adopted after the modification was proposed. Clarifying language has been added to this decision to address these comments, where appropriate.

Findings of Fact

1. PG&E did not provide documentation of the total cost of this contract expansion.
2. It is not clear whether the cost effectiveness analysis on the record in this proceeding uses the same methodology or assumptions as the cost effectiveness analyses of demand response activities in A.08-06-001 et al.
3. Expanding the ECS contract would amount to the approval of additional demand response beyond that analyzed in A.08-06-001 et al. and authorized in D.09-08-027.
4. D.09-08-027 adopted a 10-in-10 baseline for demand response activities in 2009-2011.
5. The contract that is the subject of this Petition for Modification estimates demand response for settlement payment purposes utilizing a 3-in-10 day aggregated baseline.
6. D.09-08-027 adopted specific rules governing the situations in which a customer could enroll concurrently in multiple demand response activities.
7. The contract that is the subject of this Petition for Modification contains multiple program participation rules that are potentially inconsistent with the rules adopted in D.09-08-027.

Conclusions of Law

1. PG&E bears the burden of proof that the expansion of its ECS contract requested in this petition is reasonable, cost effective, and in the public interest.

2. In order to properly evaluate the cost effectiveness of new or modified programs, it is reasonable to require that they are analyzed in a consistent way with the bulk of the utilities' demand response activities, which were adopted in D.09-08-027.

3. It is reasonable to require PG&E to either use the baseline methodology adopted in D.09-08-027 in new or modified contracts entered during the 2009-2011 period, or to justify its departure from that adopted baseline.

4. It is reasonable to require PG&E to incorporate the multiple program participation rules adopted in D.09-08-027 in future contracts or contract expansions during the 2009-2011 period, or to justify a departure from those rules.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 07-05-029 filed by Pacific Gas and Electric Company is denied, and the associated contract amendment is rejected.

2. Application (A.) 07-02-032 and A.07-02-033 are closed.

This order is effective today.

Dated March 11, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners

